

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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ALBERTO RESTO,

Plaintiff,

v.

No. 9:08-CV-929  
(GLS/DRH)

OFFICE OF MENTAL HEALTH; UPSTATE  
SPECIAL HOUSING UNIT; GEORGE PATAKI;  
DOCTOR WURZBERGER; MR. MARINELLI,  
Coordinator; and KIM, Unit Chief,

Defendants.

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**APPEARANCES:**

ALBERTO RESTO  
Plaintiff pro se  
01-A-0183  
Upstate Correctional Facility  
Post Office Box 2001  
Malone, New York 12953

**DAVID R. HOMER  
U.S. MAGISTRATE JUDGE**

**REPORT-RECOMMENDATION**

In an order filed September 2, 2008, this Court directed Alberto Resto ("Resto") to either pay the filing fee of \$350.00 or submit a current authorization form. Docket No. 4. On November 18, 2008, a Text Order was issued reminding plaintiff of his obligation and granting an extension of time until December 21, 2008 to comply with the Court's order. Resto has neither paid the filing fee nor submitted a current authorization form. Accordingly, since this action cannot proceed in the absence of Resto's submission of the required filing fee or an authorization form, it is hereby

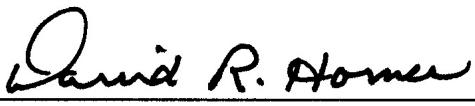
**RECOMMENDED** that Resto's complaint be **DISMISSED** in its entirety without prejudice pursuant to Fed. R. Civ. P. 16(f)(1)(C) and 37(b)(2)(A)(v) for Resto's failure to comply with the Court's September 2, 2008 order.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

**FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE**

**APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: January 7, 2009  
Albany, New York

  
United States Magistrate Judge